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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 03A01-0709-CR-419

April 18, 2008

BARNES, Judge

Case Summary

Raymond Cowan appeals his conviction for Class A misdemeanor domestic battery. We affirm.

Issues

The issues before us are:

- I. whether the trial court violated Cowan's constitutional right to confrontation when it allowed the introduction of the victim's statements through a police officer's testimony;
- II. whether the trial court erred when it allowed this hearsay evidence to be admitted at trial; and
- III. whether there was sufficient evidence to support Cowan's conviction.

Facts

On November 5, 2006, Officer Terrance Lee Holderness of the Bartholomew County Sheriff's Department responded to a 911 call from V.B., who was Cowan's girlfriend. V.B. told Officer Holderness that she was living with Cowan and that Cowan had returned home that afternoon after having been out all night. Cowan began to argue with V.B. and eventually punched her in the right eye, pushed her to the ground, and kicked her. Cowan left the scene, and V.B. called the police to report the incident to Officer Holderness. V.B. called the police a second time after Cowan returned later that afternoon. Officer Holderness returned to the residence with another officer, and Cowan answered the door. Cowan told Officer Holderness that he lived at the residence and had argued with V.B. earlier that afternoon.

The State charged Cowan with one count of Class A misdemeanor domestic battery. During a bench trial, V.B. was not present and the State relied on Officer Holderness as its sole witness. Cowan objected to Officer Holderness's testimony regarding V.B.'s statements on grounds that it was hearsay. The State argued that these statements by V.B. were admissible as an excited utterance and the trial court agreed. The trial court found Cowan guilty of Class A misdemeanor domestic battery. Cowan now appeals.

Analysis

I. Constitutional Right to Confrontation

Cowan argues that Officer Holderness's testimony regarding V.B.'s statements was barred because it failed to satisfy the Confrontation Clause of the Sixth Amendment to the United States Constitution. See Crawford v. Washington, 541 U.S. 36, 68, 124 S. Ct. 1354, 1373 (2004) (out of court testimonial statements may be admitted at trial only if the declarant is unavailable and the defense had an opportunity to cross-examine the declarant before trial.) More specifically, Cowan argues that these statements were improperly admitted because he did not have the opportunity to cross-examine V.B. before trial. However, Cowan did not object on confrontation grounds during the trial; he only objected on hearsay grounds. Cowan may not object on one ground during trial and argue a different ground during the appeal. Simmons v. State, 714 N.E.2d 153, 155 (Ind. 1999). Therefore, Cowan has waived this issue on appeal. See Haley v. State, 736 N.E.2d 1250, 1252 (Ind. Ct. App. 2000) (defendant's objection to a statement only on hearsay grounds resulted in a waiver of his confrontation claim).

II. Admission of Hearsay

Cowan next argues that Officer Holderness's testimony regarding his conversation with V.B. was improperly admitted hearsay and warrants the reversal of his conviction. We disagree. The admission of evidence is within the sound discretion of the trial court, and we will not reverse a decision to admit evidence absent a manifest abuse of discretion. Goldsberry v. State, 821 N.E.2d 447, 453-54 (Ind. Ct. App. 2005). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id. at 454. In reviewing a trial court's decision, we will consider only the evidence in favor of the ruling and any unrefuted evidence in the defendant's favor. Id.

A hearsay statement may be admitted as an excited utterance if they meet the three elements of Indiana Evidence Rule 803(2). It must be shown that (1) a startling event occurs; (2) a statement is made by a declarant while under the stress of excitement caused by the event; and (3) the statement relates to the event. Jenkins v. State, 725 N.E.2d 66, 68 (Ind. 2000). This is not a mechanical test; it turns on whether the statement was inherently reliable because the witness was under the stress of an event and unlikely to make deliberate falsifications. Id. Furthermore, even though the time period between the startling event and statement is a factor to consider, no precise length of time is necessary. See Holmes v. State, 480 N.E.2d 916, 918 (Ind. 1985).

V.B.'s statements to Officer Holderness satisfy the three criteria for the excited utterance exception for hearsay statements. Officer Holderness responded to V.B.'s emergency call within ten minutes after receiving the dispatch. The fact that V.B. had

driven to a location five minutes away from the residence to make the 911 call and had immediately returned to the residence before Officer Holderness arrived does not negate the startling nature of being attacked by Cowan. Furthermore, Officer Holderness testified that he observed V.B. was “talking fairly rapidly”, upset, and slightly excited when discussing the incident. Tr. p. 9. Finally, V.B.’s statements related to the startling event, i.e. Cowan’s attack. The trial court did not abuse its discretion when it admitted Officer Holderness’s testimony of V.B.’s statements under the excited utterance exception to the hearsay rule.

III. Sufficiency of the Evidence

Cowan finally argues that there was insufficient evidence to sustain his conviction. We disagree. Our standard of review for sufficiency of the evidence claims is well settled. When reviewing the sufficiency of the evidence supporting a conviction, we will not reweigh the evidence or judge the credibility of witnesses. Staton v. State, 853 N.E.2d 470, 474 (Ind. 2006). We must look to the evidence most favorable to the conviction together with all reasonable inferences to be drawn from that evidence. Id. We will affirm a conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Cowan claims the State failed to prove that V.B. was the same person who made both emergency calls and who was present at the scene when the police arrived. We believe the circumstances of the incident and the testimony by Officer Holderness at trial sufficiently established V.B.’s identity as the being the same victim at the scene. During

trial, a recording of the emergency call was played for Officer Holderness and he identified the voice on the recording to be that of the same V.B. who was present at the scene. Officer Holderness also noticed that V.B.'s injuries, as evidenced in photographs he had taken of her, had substantiated V.B.'s claim of being attacked by Cowan. Even though Cowan claims these injuries were caused by V.B.'s dogs, the trial court was free to believe Officer Holderness's story over Cowan's. Furthermore, when the police asked Cowan what had happened, Cowan stated that he had an argument with V.B. earlier in the day. There was sufficient evidence to reasonably infer that the victim at the scene was, in fact, V.B. and was injured by Cowan.

Cowan also claims that the State failed to sufficiently establish that V.B. and Cowan were husband and wife. However, Cowan was convicted under Indiana Code Section 35-42-2-1.3, which allows a domestic battery charge to be brought against a person who "is or was living as if a spouse of the other person" During trial, it was noted that V.B. identified her residence during her initial emergency call and to Officer Holderness after he arrived. When V.B. was questioned by Officer Holderness, she stated that her long-term live-in boyfriend, Cowan, had attacked her at this residence. Furthermore, Cowan was the only person present when the police arrived the second time and indicated to Officer Holderness that he also lived there. The trial court could reasonably conclude that the testimony of Officer Holderness presented sufficient evidence to convict Cowan under the relevant section of the statute.

Conclusion

The constitutional issue is waived. The trial court did not abuse its discretion in admitting V.B.'s statements into evidence. Finally, there is sufficient evidence to support Cowan's conviction for domestic battery.

We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.